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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/593,398	07/23/2007	Ansui Xu	20458-004US1 CGL04/0118US	2694
26191	7590	06/26/2009	EXAMINER	
FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			TOUSSAINT, DALILA	
			ART UNIT	PAPER NUMBER
			1794	
			NOTIFICATION DATE	DELIVERY MODE
			06/26/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/593,398	<b>Applicant(s)</b> XU ET AL.	
	<b>Examiner</b> DALILA TOUSSAINT	<b>Art Unit</b> 1794	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/19/2008 and 07/10/2007</u> .                               | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 4-6, 8, 10-12, 14, 16-18, and 20 are objected to for failing to define the article. The article --A-- should be inserted at the beginning of each of these claims.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 1-20 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. In claims 1 and 15, the term "reduce effective" is indefinite. It is unclear to what is being reduced, by how much, and it is unclear to what is effective and for what purpose. The term does not set forth a standard for ascertaining the requisite degree and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention, thus the term is indefinite.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Jensen et al. US patent 5928701 in view of Heller US patent 5332594 and Zimmerman

et al. US publication 2002/0034571 and Chinag et al. US patent 6491959.

- a. Referring to claims 1-20, Jensen discloses a snack food product comprising about 20% to 45% corn masa, 20% to 50% fat free filler selected from the group consisting of starch, protein, fibers and mixtures thereof, and 0-10% seasoning (Jensen; column 2, line 32-40). The food product includes chips, tortilla, corn sticks, corn curls, pellet snacks, half products, and other extruded snacks based on corn (Jensen; column 2, line 60-64). It also would have been obvious to make any other corn based product such as taco shells and breakfast cereals; since it has been held to be within the general skill of a worker in the art to select the known material on the basis of its suitability for the intended use as a matter of obvious choice. The fat free fillers can be selected from ingredients listed on column 3, line 20-60, wherein starch, oat fibers such as oat bran and

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proteins such as wheat gluten and corn isolate may be incorporated into the edible substrate.

However, Jensen is silent to the specific amounts of corn bran and protein as claimed in the instant claims. Also, Jensen is silent to the inclusion of pregelatinized flour, pregelatinized starch and corn germ.

Heller discloses snack product or corn chip wherein a dough-like mixture of bran, masa, gluten flour and water is mixed to produce a stable snack product (Heller; abstract). The dry ingredients include 30% to 40% corn masa, 15% to 20% oat bran, and 5% to 6% gluten flour (Heller; column 2, line 45-54). The bran in combination with masa and gluten flour, enhance the texture of the final product (Heller; column 2, line 1-2).

Zimmerman discloses a snack chip product, wherein 0.5% to 30% of the ingredient blend is pre-gelatinized starch or flour (Zimmerman; ¶ 0086 and ¶ 0091). Zimmerman discloses adding fibers, such as wheat bran or corn bran to further increase the dough sheet strength and enhance the health benefits of the snack (Zimmerman; ¶ 0118 and ¶ 0122). Also Zimmerman discloses adding proteins, such as wheat gluten, corn, and mixtures thereof to improve the final texture of the product.

Chiang discloses a snack product. The snack product comprise adding pregelatinized starch to obtain cohesiveness, dough extensibility and dough machinability, adding pregelatinized corn flour to enhance and/or promote surface bubbling and to intensify the corn flavor, and adding corn germ to

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enhance the natural corn flavor (Chiang; column 8, line 4-45 and column 9, line 28-30).

Regarding the ingredients amount of Jensen, it would have been obvious to one having ordinary skill in the art at the time of invention to include germs, starches, proteins such as wheat gluten, corn protein isolate, or mixtures thereof, and fibers such as oat bran, corn bran, or mixtures thereof to obtain different nutritional factors, taste, texture and flavor as the secondary references. As stated above Jensen discloses that fat free fillers can be selected from ingredients listed on column 3, line 20-60, wherein starch, oat fibers such as oat bran and proteins such as wheat gluten and corn isolate may be incorporated into the edible substrate depending on the flavor desired. It would have been obvious to use ingredients, such as germs, starches, proteins such as wheat gluten, corn protein isolate, or mixtures thereof, and fibers such as oat bran, corn bran, or mixtures thereof as taught by the secondary references, to promote structural integrity within the chip and enhance the flavor characteristic within the food item. Depending on the nutrition, flavor and texture desired the ingredient amounts can be adjusted depending on the properties wanted. Such amounts can readily be determined by one skilled in the art following the guidance of the secondary references and through routine experimentation.

### ***Double Patenting***

8. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or

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discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

9. Claims 1-20 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-20 of copending Application No. 11084197. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DALILA TOUSSAINT whose telephone number is (571)270-7088. The examiner can normally be reached on Monday - Friday, 8:00 a.m. - 5:00 p.m., EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DT

/KEITH D. HENDRICKS/  
Supervisory Patent Examiner, Art Unit 1794